COURT NO. 2

HIGH COURT OF UTTARANCHAL AT NAINITAL.

First Appeal No. 49 of 2003

Smt. Trimlesh Bharti … **Appellant.**

Versus

Shravan Kumar … **Respondent.**

Sri Sharad Sharma, learned counsel for the appellant.
Sri Alok Singh, & Sri Ramji Srivastava, learned counsel for the respondent.

Hon. P.C. Verma, J.
Hon. B.S. Verma, J.

The appeal has been preferred under Section 19 of the Family Courts Act against the judgment and decree dated 27-9-2003 passed by the Judge, Family Court, Dehradun, in Original Suit No. 34 of 2002, Shravan Kumar vs. Smt. Trimlesh, whereby the learned Judge has passed decree for divorce dissolving the marriage solemnized between the parties on 2-12-1988.

Brief facts, giving rise to the present appeal, are that the respondent-husband had initially filed a suit for divorce against the appellant in the Court of Additional District Judge Indore (Madhya Pradesh), which was ultimately transferred for hearing at Dehradun Court under the orders of the Hon'ble Supreme Court dated 18-9-2000. The petitioner-respondent has alleged in his petition that the marriage between the parties was solemnized on 2-12-1988 at Dehradun according to the Hindu rites and customs. Out of the wedlock, one son Sushant Bharti was born, who is aged 8 years and has been living with the respondent at Indore; that the petitioner-respondent is employed as Divisional Engineer in the Telephone Department and at the time of marriage, he was posted as Scientist in D.R.D.O. Dehradun. According to the respondent, this marriage was contracted by the ***Tau*** (elder brother of father) of the appellant, who holds political influence and the marriage was settled on short date on the present that the father of the appellant is seriously bed ridden,

therefore, the respondent has no adequate opportunity to observe the appellant before marriage. After the marriage, the respondent found that there are symptoms of mental disorder in the appellant and her activities were abnormal. She frequently used to quarrel with the respondent saying that the respondent has no Bungalow, servants, motor-car, etc. Subsequently, the respondent was selected as Engineer in the Telecom Department and was posted at Ahmedabad. The appellant was taken there and there also, she used to adhere abnormal behaviour. Consequently, the respondent was compelled to take help from the Psychic Experts and Mental Disease Specialist. The appellant was given treatment by several Specialists at different hospitals and clinics. Ultimately, it was established that the appellant is suffering from disease ***"Chronic Schizophrenia".*** On 17-9-1998, the appellant wrote letter to her father that she is suffering from ill health despite treatment and she went to her parents at Dehradun and she has been living there. When the respondent informed the parents of the appellant of the aforesaid Chronic Disease of the appellant since before her marriage, their attitude towards the respondent changed and they used to hurl abuses to the respondent by telephone and letters. All these affairs made it impossible for the respondent to live with the appellant. According to the respondent, the appellant-wife was not fit to perform her marital obligation and co-habitation etc, hence the petition for divorce has been filed.

The appellant-O.P. contested the case by filing her written statement. She has admitted the marriage and it has also been admitted that out of the wedlock, son Sushant was born to the parties. It has been pleaded that the marriage between the parties was contracted out of their free will and their relations were cordial. The appellant has denied the metal disease. According to her, she was being ill treated and tortured by the respondent himself and he used to say that he will take divorce and shall marry another lady.

On the pleadings of the parties, the learned Judge framed as many as seven Issues in the case. Issue No.1 related to suffering of appellant from chronic mental disease **Schizophrenia**. Issue No. 2 related to marriage between the parties by fraud concealing the said disease of the appellant. Issue No. 3 related to the possibility of cure of the said disease. Issue No.4 related to the relief and cost.. Issue No. 5 related to bar of limitation to file the petition. Issue No. 6 related to maintenance of Rs. 10,000/- to the appellant as alleged in the written statement. Issue No. 7 has been framed regarding custody of the minor son. The learned Judge took Issue Nos. 1 and 2 together for decision. After discussing the entire evidence on record, the learned Judge came to the conclusion that the consent of marriage from the respondent was obtained under pressure and by committing fraud. It has also been held that the appellant was suffering from the said chronic disease from before her marriage. Accordingly, both the Issued No. 1 and 2 have been decided in favour of the respondent. On Issue No. 3, it has been held that the disease of the appellant is incurable and is dangerous. It has also been observed by the learned Judge that in the interest and welfare of the minor son, the custody of the minor son with the respondent is proper. On Issue No. 5, the learned Judge found that the petition for divorce is not barred by limitation. On Issue No. 3, the learned Judge has come to the conclusion that the appellant is entitled to get the sum of Rs. 3,00,00 (three lacs) from the respondent towards permanent alimony/maintenance. On Issue No. 7 relating to custody of the minor son, the learned Judge found that it will be just and proper in the interest and welfare, education, etc. of the minor that the respondent shall continue the custody of the minor son and the appellant is not entitled to the custody of the minor son. Consequently, the learned Judge has come to the conclusion that the petition of the respondent for divorce is liable to be decreed. Accordingly, the learned Judge passed decree of divorce in favour of the respondent thereby dissolving the marriage between the parties by a decree of divorce. The respondent-husband has been directed to pay sum of Rs. 3,00,000/-(three lacs) towards permanent

alimony/maintenance within two months. The custody of the minor son has been given to the respondent-father with liberty to appellant to meet her son from time to time, as mentioned in the impugned order. Aggrieved by the said judgment and decree, the appellant-wife has come up in appeal.

We have heard learned counsel for the parties and have carefully gone through the entire material on record including the impugned judgment and decree.

It has been vehemently submitted on behalf of the appellant before us that the appellant has been deprived of sufficient opportunity as no guardian in accordance with provision of law has been appointed on behalf of the appellant before the court. This contention of the appellant is not based on record. From a perusal of the record, it is clear that the appellant had requested the court at Indore (M.P.), where the petition has been initially presented, and on the request of the appellant herself, her father Mulayam Singh was appointed as next friend of the appellant before the Court below. The learned Judge has observed in the impugned judgment that on 30-101998, detailed inquiries were made on the point of appointment of guardian-at-litem of the appellant in the case under appeal, therefore, it cannot be said at this stage that sufficient opportunity was not afforded to the appellant to contest the case.

It has been next argued on behalf of the appellant that the findings of the learned Judge on Issue No.1 and 2 are not based on record. It has been submitted that it is not proved on record that the appellant was suffering form any incurable disease from before the marriage. It has also been submitted that the marriage between the parties was contracted by mutual consent and no fraud was ever committed in the contract of marriage. We have considered the submissions of the learned counsel for the appellant. The most important aspect of this case is that the appellant-wife herself has not filed written statement in this case, rather she had requested the court

for appointment of next friend. From the perusal of record, it comes out that on 20-8-1998, efforts for compromise between the parties were made before the Additional District Judge Indore (Madhya Pardesh). It has been found by the learned Additional District Judge Indore that the behaviour of the appellant was abnormal with the respondent and the same has been reduced in the order-sheet, dated 30-101998, therefore, the learned Addl. District Judge directed the persons accompanying the appellant to keep control over the appellant. Considering the abnormal behaviour of the appellant, the learned Addl. District Judge Indore has directed Sri Mulayam Singh to file written statement on behalf of the appellant. Besides this, the petitioner-respondent has examined different Medical Specialists to prove the disease of the appellant-O.P. We have gone through the testimony of all the witnesses examined on behalf of the respondent-petitioner as well as the witnesses examined on behalf of the appellant-wife. Before the court below, the appellant could not produce any such evidence, which may be sufficient to rebut the testimony of the Dr. Ashok Dagria, Dr. Ram Gulam Rajdan (P.W. 5) and Dr. Vijay Bodhale (P.W. 6). All these doctors have testified that the appellant has been suffering form mental disease and she requires continuous treatment. According to them, the mental disease of the appellant cannot be fully cured, therefore, there is no possibility of good-health of the appellant. After discussing the entire evidence on record, the learned Judge has observed that the appellant has always remained mentally ill and she has been suffering from the disease called **"Schizophrenia"** relating to mental disorder and there are no chance of her recovery from the disease. Having considered the entire evidence on record, both oral and documentary, in its totality, we hold that the appellant has been suffering from the mental disease **"Schizophrenia"** form before her marriage with the respondent. The learned Judge has closely scrutinized the entire evidence in the impugned judgment and order and there is no need to reiterate the same here. It also comes out form the record that the consent for marriage from the respondent-petitioner was obtained under pressure and the mental disorder of the

appellant has been concealed at the time of marriage. The findings recorded by the learned Judge on Issue Nos. 1 and 2 are fully based on the evidence available on record and it does not require any interference in appeal.

It has been next submitted on behalf of the appellant that in fact, the respondent was guilty of committing cruelty on the appellant and he was making demands for dowry. It has been argued that the appellant was ousted from the house or at least compelled to live with her parents and the story of mental disorder has been concocted to get a decree of divorce and to marry another lady by the respondent. We have scrutinized the whole record. Admittedly, the appellant is well educated. This fact find support form the evidence of D.W.l Mulayam Singh. Had there been an iota of truth in the pleas taken in the written statement, filed on behalf of the appellant, the appellant, who is admittedly post graduate by qualification, would have lodged a report of cruelty against the respondent. There is no explanation as to why no step was taken to make a report with the police or to inform any authority about cruelty or harassment by the respondent. On the other hand, there is two F.I.Rs. (Ext. 1 & 3), lodged by the respondent that on 2-7-1993 and 11-7-1993 the appellant had left the company of the respondent without any intimation and he was forced to lodge the report about the incident. The appellant has failed to prove her contention that she has been deserted by the respondent or that the respondent was guilty of cruelty or harassment for or in connection with demand for dowry, etc., therefore, the contention of the appellant on this count is not at all tenable. One another circumstances, which goes not the root of the matter is that in this case, the respondent has tendered a conversation recorded on tape-recorder, which is Ext. 111 on record. The conversation between the parties is on record as Ext. 112. This also corroborates that the appellant has been suffering form mental disorder. There is plethora of evidence on record to show that in fact the appellant has been suffering from mental disease aforesaid and

concrete efforts have been made by the respondent for treatment of the disease of the appellant. In the witness box different medical experts have also been produced to prove the disease of the appellant. Regarding behavior of the appellant before the court, there is observation of the Addl. District Judge Indore vide order dated 30-10-1998 to show that she was found behaving abnormally. Besides, there are letters half-written by the appellant to her parents and Jija, in which she has mentioned herself as frustrated from her life and even intended to commit suicide. There is nothing on record to show that the witnesses produced by the respondents are not reliable or interested in any manner to favor the respondent and to give false evidence detrimental to the appellant. The appellant has appeared in the witness box as D.W.2. In her testimony also, she has confronted her own case. She could not say as to what has been written in the written statement filed on her behalf. She has further stated that the written statement filed by her father is wrong. There is medical opinion on record that the person suffering from the said mental disease develops the tendency of committing suicide or to commit murder.

Upon consideration of the entire record, we are of the consistent view that the only inference, which can be safely drawn on appraisal of the material on record, is that a case for dissolution of marriage between the parties is made out. The learned Judge has rightly appreciated the evidence led by both the parties. We are not inclined to find favour with the appellant in the present case.

It has been lastly submitted before us that the amount of permanent alimony of Rs. 3,00,000/-(three lacs) is inadequate and insufficient. This submission is misconceived. The learned Judge has granted the sum of Rs. 3,00,000/ after considering the source of income/salary and liabilities of the respondent. Admittedly, the respondent will have to maintain and bring up the minor son. Moreover, a lump-sum of Rs. 3,00,000/-(three lacs) cannot be said to be insufficient to maintain one single person. We are of the view

that out of this amount, the appellant can safely meet her usual expenses, etc. There is no merit in the submissions made on behalf of the appellant on this court.

No other point was urged or argued before us in this appeal.

In the result, the appeal fails on merit and is liable to be dismissed.

The appeal is dismissed. The judgment and decree, under appeal, are upheld. No order as to costs.

12-10-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP